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CITATIONS

CASES:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC and MILAN STOJIC, and also BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, *Petitioners,*

v.

STATE OF OREGON, acting by and through the State Land Board, *Respondent.*

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC, MURTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and RAJKA ZEKIC, and BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, *Petitioners,*

v.

STATE OF OREGON, acting by and through the State Land Board, *Respondent.*

On Writ of Certiorari to the Supreme Court of the State of Oregon

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BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the Supreme Court of the State of Oregon, R 82, is reported at 349 P.2d 255. The Cir-

cuit Court of the State of Oregon for the County of Multnomah rendered no opinion.

JURISDICTION

The decrees of the Supreme Court of the State of Oregon, R 105-6, reversing the orders of the Circuit Court of the State of Oregon for the County of Multnomah, R 76, 79, are dated and were entered January 13, 1960. The petitioners' timely petition for rehearing was denied by order dated and entered March 1, 1960. R 105. The Petition for a writ of certiorari was filed on May 26, 1960, and was granted on October 10, 1960. U.S. , 81 S.Ct. 44, R 107. The jurisdiction of this Court rests on Tit. 28 U.S.C. Sec. 1257(3).

QUESTIONS PRESENTED

1. Whether Article II of the Convention for Facilitating and Developing Commercial Relations of 1881, concluded between the United States and Serbia, and in force and effect between the United States and Yugoslavia, 22 Stat. 963, in granting to the citizens of each country the right, among others enjoyed by citizens of the most favored nation, to acquire by inheritance, or otherwise, property located within the territory of the other, grants such right to citizens of one country who are not within the territory of the other.

2. Whether notwithstanding the adherence of both the United States and Yugoslavia to the Articles of Agreement of the International Monetary Fund, 60 Stat. 1401, a State of the United States may deprive citizens and residents of Yugoslavia of rights of inheritance which they would otherwise have under its laws, solely by reason of the existence in Yugoslavia of foreign exchange controls imposed or maintained consistently with such Agreement.

TREATIES AND STATUTES INVOLVED

The treaty provisions involved are those of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation) concluded between the United States and Serbia on October 2/14, 1881, 22 Stat. 963; Tr. Ser. 319; 2 Malloy, *Treaties, etc.*, 1613; R 54-57; App. A, pp. 1a-2a, *infra*.[1] Also involved are the provisions of Article VI, § 3, Article VIII, § 2(b), and Article XIV, §§ 2 and 4, of the Articles of Agreement of the International Monetary Fund, concluded on December 27, 1945, 60 Stat. 1401, T.I.A.S. 1501, to which both the United States and Yugoslavia are signatories.[2] R 57-63, App. B, pp. 3a-6a, *infra*. The statutory provisions involved are those of § 111.070, Oregon Revised Statutes. R 83-4, App. C, pp. 6a-7a, *infra*.

STATEMENT

Joe Stoich and Muharem Zekich died intestate in Oregon in December, 1953. The petitioners, citizens and residents of Yugoslavia, are (except Karadzole,

[1] Hereinafter sometimes called the "Convention". That treaties concluded between the United States and Serbia continued in force and effect between the United States and Yugoslavia upon the latter's emergence from the union with Serbia of Montenegro and certain territories of the former Austro-Hungarian Monarchy, was the conclusion reached in *Ivancevic* v. *Artukovic*, 211 F.2d 565 (9th Cir. 1954), cert. denied 348 U.S. 818, in which the United States participated as *amicus* in support of that view. The Court below held that the Convention continues to be in force and effect between the United States and Yugoslavia. R 94, fn.; 349 P.2d at 263.

[2] Hereinafter sometimes called the "International Monetary Fund Agreement", or the "Agreement".

the Consul General) their respective brothers, sisters, nephews and nieces and their only heirs and next-of-kin. The State of Oregon filed petitions in the State Circuit Court for the escheat of the estates of both decedents upon the ground that as citizens and residents of Yugoslavia the petitioners were without capacity to inherit property in Oregon by virtue of § 111.070 of the Oregon Revised Statutes, for the reason that the requirements thereof were not met by Yugoslavia. R 1, 5. The Circuit Court found against the State, dismissed both petitions for escheat, and ordered distribution of the estates to the decedents' heirs and next-of-kin, the petitioners here. R 76-81. Upon the State's consolidated appeals, the Supreme Court of Oregon reversed, and ordered both estates escheated. R 82-107.

The petitioners answered Oregon's petitions for escheat by general denial, R 3, 7, and opposed them on three grounds: *First*, that the petitioners were not barred from inheriting under the Oregon statute, because all the requirements of the statute were in fact met by Yugoslavia; *Second*, that the Oregon statute was inapplicable to citizens of Yugoslavia, because citizens of that country are entitled to the same rights of inheritance in the United States as American citizens by virtue of Article II of the Convention, R 55, App. A, pp. 1a-2a, *infra*, which grants to Yugoslav citizens the same rights to acquire property in the United States, by inheritance or otherwise, as are enjoyed by citizens of the most favored nation, and the United States has by treaty granted to citizens of other nations the right to inherit property in the United States under the same terms and conditions as citizens of the

United States;[3] and *Third*, that by reason of the adherence of both the United States and Yugoslavia to the International Monetary Fund Agreement, R 57, App. B, pp. 3a-6a, *infra*, the maintenance by Yugoslavia of foreign exchange controls, consistent with such Agreement, could not in any event be considered as a failure by Yugoslavia to meet the requirement of paragraph (1)(b) of the Oregon statute. R. 84, App. C, p. 6a, *infra*.

The Circuit Court denied Oregon's petitions for escheat entirely on its findings that Yugoslavia in fact met all the requirements of the Oregon statute, and its orders refer neither to the Convention nor the International Monetary Fund Agreement. R 76-79.

On appeal, the Oregon Supreme Court held that the petitioners, not being in the United States, had no rights under Article II of the Convention, and, fur-

[3] See, *e.g.*, Article IX of the Treaty of Friendship, Commerce and Navigation concluded between the United States and Argentina, July 27, 1853, 10 Stat. 1005, Tr. Ser. 4, 1 Malloy, *Treaties, etc.*, 20, 23, which provides in pertinent part:

> In whatever relates to • • • the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament or in any other manner whatsoever • • • the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights as native citizens • • •.

The Secretary of State concurs in the view that the rights thus granted to citizens of the Argentine extend to citizens of Yugoslavia within the purview of Article II of the Convention. See the Note of the Secretary of State dated April 24, 1958, App. D, at p. 9a, *infra*. Certified copies of such Note and of the Yugoslav Ambassador's Note dated April 18, 1958, App. D, pp. 12a-20a, *infra*, to which it was in reply, have been lodged with the Clerk by the petitioners.

ther, that notwithstanding the adherence of both the United States and Yugoslavia to the International Monetary Fund Agreement, the mere existence in Yugoslavia of foreign exchange controls prevented Yugoslavia from meeting the requirements of paragraph (1)(b) of the Oregon statute, regardless of whether such controls were maintained consistently with the Agreement, and on this ground reversed the Circuit Court. R 82; 349 P.2d 255.

While recognizing that rights of inheritance granted by treaty necessarily override inconsistent State laws, as this Court has held, *e.g.*, in *Hauenstein* v. *Lynham*, 100 U.S. 483 (1880), and *Clark* v. *Allen*, 331 U.S. 503, 515, 517 (1947), the Court below construed the provisions of Article II of the Convention as being applicable only to Yugoslav citizens who are within the United States, and, by necessary implication, only to American citizens who are within Yugoslavia. R 94, 100; 349 P.2d at 263, 266. In so construing Article II of the Convention, the Court below completely disregarded, and gave no weight to the Secretary of State's carefully considered construction of it, concurred in by Yugoslavia, as applying to all citizens of the United States and Yugoslavia, regardless of their whereabouts. See App. D, pp. 7a-20a, *infra*. The Court below gave as its reason for ignoring the Secretary's construction only that he had acknowledged, correctly enough, that his construction could not be considered "as effecting any modification of the treaty". R 104; 349 P.2d at 268.

Moreover, in construing Article II of the Convention, the Court below looked only to its awkward language, and failed entirely to give any consideration to the plain purpose of the Convention and what the con-

sequences would be of construing Article II one way or the other. Thus, in arriving at its construction, the Court below did not take into account that the Convention has for its express purpose "facilitating and developing commercial relations," that the provisions of the Article II here involved deal not merely with the right of inheritance, but simultaneously and in identical terms with the right *to acquire and to dispose of property by whatever means,* and *to possess* property, and that to construe Article II as excluding from its purview in these respects American and Yugoslav merchants remaining at home but doing business with the other country by mail or cable, or by sending their buyers and salesmen abroad (as the Convention expressly contemplated) would defeat the Convention's very purpose.

The Court below relied entirely for its construction of Article II on *Clark* v. *Allen,* 331 U.S. 503, 514-516 (1947), which it considered to be controlling. R 100; 349 P.2d at 266. But it misread both the treaty provision there involved, and what was there held, and, in consequence, was mistaken in its reliance.

In its opinion, the Court below first correctly quoted the treaty provision with which *Clark* was concerned, as follows, R 98; 349 P.2d at 265:

> *Nationals of either High Contracting Party* may have full power to dispose of their personal property of every kind *within the territories of the other,* by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment

> of such duties or charges only as the *nationals of the High Contracting Party within whose territories* such property may be or belong shall be liable to pay in like cases. [Emphasis supplied by the Court]

But then, by a tour-de-force doing brutal violence to the language it had thus quoted, the Court below undertook to assimilate the question before it to what it mistakenly believed had been decided in *Clark,* saying, R 98; 349 P.2d at 265:

> We are of the opinion that the following words and phrases found in the German Treaty of 1923: "Nationals of either High Contracting Party * * * within the territories of the other" are of the same import and meaning as the words and phrases found in Article II of the Treaty of 1881; that is, "citizens of the United States in Serbia and Serbian subjects in the United States," a phrasing which the defendants ascribe to Victorian English.
>
> In the Clark case, it was held that the language of Article IV of the German Treaty applied only to nationals of either of the party nations who were *within* the territory of the other. [The Court's omission and emphasis]

Thus, by the simple expedient of substituting asterisks for substance, the Court below completely perverted the treaty provision involved in *Clark,* and then plainly misstated what was held in *Clark,* although it correctly quoted from this Court's opinion, in pertinent part, as follows, R 98, 99; 349 P.2d at 265:

> Mr. Justice Douglas, speaking for the court, says * * *:
>
> "* * * In case of personalty, the provision governs the right of 'nationals' of either con-

> tracting party to dispose of their property within the territory of the 'other' contracting party; and it is 'such personal property' that the 'heirs, legatees and donees' are entitled to take.
>
> * * *
>
> "We accordingly hold that Article IV of the treaty does not cover personalty located in this country and which an American citizen undertakes to leave to German nationals. * * *".

But having thoroughly misconceived the nature of the treaty provision involved, and this Court's decision in *Clark*, the Court below concluded, R 100; 349 P.2d at 266:

> If we correctly appraise the position of defendants, they would, notwithstanding the doctrine of Clark v. Allen, supra, have us interpret the words "in Serbia" and "in the United States," as they appear in Article II of the Treaty of 1881, as referring to the place where property rights are granted rather than to the geographical location of the person claiming them. If thus construed the provision would accord to the nationals of either party wherever resident rights similar to those enjoyed by nationals of the most favored nation wherever resident. But this we decline to do, being impressed that the construction given to the German Treaty in the Clark case applies with equal force to the Serbian Treaty of 1881. * * *

But nothing of the sort was decided in *Clark*. The decision there was that the treaty applied to the succession to personal property in the United States only of decedents who were German nationals, and that it did not apply to the succession by German nationals to personal property in the United States of decedents who were American nationals. No question was there involved, and none was there decided, as to whether

the German treaty made any distinction based upon the whereabouts of either the decedent or his heir.

With Article II of the Convention thus disposed of, the Court below found no impediment to the application of the Oregon statute under which the capacity to inherit of an alien non-resident of the United States is made to depend upon the meeting of three conditions by the foreign country "of which such alien is an inhabitant or citizen." R 83, 84; App. C, p. 6a, *infra*. The second of these conditions, set out in paragraph (1)(b) of the statute, is that American citizens have

> * * * rights * * * to receive by payment to them within the United States * * * money originating from * * * estates * * * within such foreign country * * *.

The Court below held that American citizens had no such "rights" in Yugoslavia because of the foreign exchange controls it found to exist in that country, and on that ground held the petitioners here without capacity to inherit. R 104, 105; 349 P.2d at 268. In reaching this conclusion, the Court below held, R 96; 349 P.2d at 264, that it had "no bearing on our present problem", that the Yugoslav foreign exchange law expressly provides that the foreign exchange regulations include "the provisions of agreements with foreign countries which are concerned with payments," Cl. Ex. 28, R 33-35, 71, that under Yugoslav law such provisions include the third paragraph of Article II of the Convention, which grants citizens of one country "liberty to export *freely* the proceeds of the sale of their property, and their goods in general" from the other, and that under Yugoslav law this provision is construed as applying to Americans without regard to

their whereabouts. R 11, 12, 21-25, 31, 32, 46-49, 63-67, App. A, p. 1a, *infra*. See fn. 18, p. 43, *infra*. The Court below simply disregarded Yugoslavia's interpretation of Article II, and reasoned that since Article II, construed in the manner it conceived *Clark* to require, grants no rights to citizens of one country not within the other, it was immaterial that under Yugoslav law the provisions of Article II override those of the foreign exchange regulations. R 96, *et seq.*; 349 P.2d at 264 *et seq.*

Nor did the Court below relate to this recognition by Yugoslavia's foreign exchange law of the supremacy of the rights of Americans under Article II of the Convention, the circumstance that the Department of State knows of no case in which an American beneficiary of a Yugoslav estate failed to receive payment in the United States of his distributive share, pp. 12, 13, *infra*, and that, as the Court itself conceded, "[t]he record is replete with evidence of remittances from estates in Yugoslavia to persons in the United States * * *". R 92; 349 P.2d at 262. Thus, the Court said, R 93; 349 P.2d at 262:

> Even if it can be said these items of evidence do reveal a flow of exchange from Yugoslavia to American heirs as of December, 1953, they, at the most, only attest the indulgence of the Yugoslavian authorities as to the American heirs as of that time. Certainly, as discretionary acts, permissible under the Law, they do not evidence the presence of an unqualified and enforceable right to receive by delivery of funds in the United States to citizens thereof under the foreign exchange laws and regulations of that country in 1953. The fact that some American citizens were so favored *does not preclude wonderment* as to how many may have been denied "the right to receive" or, indeed,

> whether those who did receive moneys by exchange, received all or only a part thereof. [Emphasis supplied]

The Court gives us no clue as to what inspired its "wonderment", and there is nothing in the record that as much as suggests that any American beneficiary of a Yugoslav estate has been denied the right to receive his distributive share in dollars in the United States, or has, to use the vernacular, been short-changed.[4] Indeed, as the Court was informed, the Department of State, to which any complaint concerning such matters would ordinarily be addressed, reported in December, 1957, that:

> The Department * * * does not have complete * * * information regarding all claims of American citizens to share in estates in Yugoslavia * * *. Such matters are ordinarily handled in Yugoslavia, as in other countries, by the heir * * *

[4] The character of the Court's approach is emphasized by its later decision in *Mullart* v. *Oregon*, 353 P.2d 531 (1960), where, taking note that the Soviet Union's absorption of Estonia in 1941-3 remained unrecognized by the United States, it held an Estonian living in Estonia eligible to inherit because under a 1925 treaty between the United States and Estonia, American consuls in that country had the right to receive, and, apparently to transfer freely to the United States, legacies due to Americans, notwithstanding foreign exchange laws generally prohibiting unlicensed remittances abroad. But one consequence of the unrecognized incorporation of Estonia into the Soviet Union is that there have been no American consuls in Estonia. See, *e.g.*, Department of State, *Foreign Service List, July 1960*, 19. Another is that there must be serious doubt, to say the least, whether the authorities in Estonia recognize the 1925 treaty as continuing in force. Indeed, for the purposes of trade controls, the United States treats Estonia as a part of the Soviet Union notwithstanding such treaty. See, *e.g.*, Department of State, *Treaties in Force* (1960) 57, fn.

personally or by * * * [his] legal representative * * *.

* * * The Department is normally informed * * * only when the American citizen * * * believes he is * * *, being denied the share of an estate * * * rightfully his, or * * * is encountering unwarranted difficulties * * * in effecting the transfer to the United States of * * * [its] proceeds * * *.

* * * [T]he Department has not been apprised of any instance where an American citizen has not been permitted to inherit * * * in Yugoslavia, or, after * * * application therefor, has not been granted permission to transfer his inheritance * * * to the United States in dollars.[5]

The position of the Court below was that under the Oregon statute it is immaterial whether such payments have *in fact* been received, since it has construed the statutory requirement as being that Americans have the legal right to compel them.[6] As to that, the Court below found that "the testimony of the Yugoslavian officials, including the diplomatic correspondence * * * serves at most to create a conflict * * *". R 93; 349 P.2d at 262. The record does not support this conclu-

[5] See Note of the Department of State to the Yugoslav Embassy, December 26, 1957, the text of which is set out in the Brief for the United States as *Amicus Curiae*, submitted on the petition for certiorari herein, App. B, pp. 22-24. The text of the Yugoslav Embassy's note of November 4, 1957, to which such note was in reply, is set out in the same Brief, App. B, pp. 24-26. Certified copies of both notes have been lodged with the Clerk by the petitioners.

[6] Conversely, it would appear from the *Mullart* case, fn. 4, p. 12, *supra*, that the Court below considers it immaterial whether the "legal" right upon which it insists, has any substance.

sion,[7] and the Court's opinion puts it beyond mere inference that the "conflict" it found was, actually, between the expert testimony and other evidence of Yugoslav law received at the trial of this case, and the conclusions that were reached by the Supreme Court of California on the record before it in *Arbulich's Estate*, 41 Cal. 2d 86, 257 P.2d 433 (1953), cert. denied 346 U.S. 897. R 87-92; 349 P.2d at 258, 262. However that may be, the Court below found Yugoslavia's foreign exchange law in effect in December 1953, to be the same as it was found in *Arbulich* to be in 1947, and, in that form to "negative the concept of an unqualified and enforceable right to receive delivery of Yugoslavian inheritance in this country by an American citizen * * *". R 87-92, 104; 349 P.2d at 268. Then, after concluding that the "adverse effect" that followed under paragraph (1)(b) of the Oregon statute, R 83, 84, App. C, p. 6a, *infra*, was not "circumvented" by Article II of the Convention, construed as

[7] For example, with respect to the crucial Article 8 of the Yugoslavia exchange law, Cl. Ex. 28, R 34, 71, the Court below says, "although pressed * * * the * * * witness Temer * * * was unable to say whether the current Article 8 * * * was effective in December, 1953". R 96; 349 P.2d at 264. The record, however, discloses nothing of the sort, but rather that the witness was emphatic that Article 8, as set out in Cl. Ex. 28, was in effect at that time. Thus, on redirect examination he was asked, "* * * was this in effect in December, 1953?", and he replied, "Yes, it was in effect in 1953." R 34. Similarly, on recross-examination he testified, "* * * I can tell you that in 1953 this, what I have introduced now, was Article No. 8 * * *". R 35. See also, fn. 18, p. 43, *infra*. Article 8 was not referred to on direct-examination, and was mentioned on cross-examination when the witness testified that the translation of the foreign exchange law as set out in *Arbulich*, which counsel read to him, did not include Article 8. Nor was he "pressed" or "unable to say" on cross-examination when Article 8 became effective. R 18-28; 28-33, esp. 31, 32.

it considered *Clark* to compel, the Court below quickly came to the same conclusion with respect to the International Monetary Fund Agreement.

The Court below rejected the petitioners' contention that assuming, *arguendo*, that the Yugoslav foreign exchange controls, permissible under the International Monetary Fund Agreement, were applicable to remittances to the United States of the distributive shares of American beneficiaries of Yugoslav estates, nevertheless, in view of the adherence of both the United States and Yugoslavia to the Agreement, a State of the United States could not deprive citizens and residents of Yugoslavia of the capacity to inherit, which they would otherwise have under its laws, solely because of the existence in Yugoslavia of such controls. The Court below said, R 103; 349 P.2d at 268:

> The * * * Agreement gives no support to the thesis of defendants and, to the contrary, is in a large sense on [*sic*] international recognition that *some* countries, *rightly or wrongly*, would impose strictures such as are exemplified by the foreign exchange laws of Yugoslavia and Bulgaria * * *. [Emphasis supplied]

What the Court below meant to imply by *some* countries and by *rightly or wrongly*, is not clear. Certainly, as the recent difficulties of the dollar demonstrate, as the conferees at Bretton Woods well knew and the Agreement fully recognizes, no country is immune from the economic imbalances which, if continued, make the regulation of foreign exchange transactions *necessary*. See, Halm, *International Monetary Cooperation* (1945) 35, 36. Certainly, too, as the Agreement also recognizes, the ability of such regulations to achieve the result for which they are designed, and which alone will

permit their withdrawal, must depend in large measure upon their not being considered in other countries as "contrary to public policy."

SUMMARY OF ARGUMENT

I

Article II of the Convention guarantees to citizens of each country the rights enjoyed by citizens of the most favored nation to acquire, possess and dispose of property located in the other, and to acquire and dispose of such property "by purchase, sale, donation, exchange, marriage contract, testament, inheritance or in any other manner whatever". The question is whether the words "in Serbia" and "in the United States" appearing in Article II, relate, respectively, to the location of the "citizens of the United States" and the "Serbian subjects" to whom such rights are guaranteed, or to where such citizens and subjects, respectively, are guaranteed such rights.

To construe Article II as excluding citizens of one country not within the other from its guarantee of the right to acquire by inheritance property located in the other, would necessarily require that Article II be construed as not guaranteeing to citizens of either country who remain at home, the right to acquire property located in the other by any means whatever, or to possess or to dispose of property located in the other, and further, that Article IV of the Convention be construed as not guaranteeing to citizens of either country who remain at home, access to the courts of the other, and other civil rights.

The Convention was concluded expressly for the purpose "of facilitating and developing the commercial

relations established between the two countries", and so to construe its Article II would leave citizens of both countries who remain at home, but who do business with the other through agents (as the Convention expressly contemplates) or by mail or cable, without any guarantee as to *any* right to acquire, own or dispose of property in the other. Since such rights are essential to the existence and development of commercial relations, any such construction of Article II would be inconsistent with, and frustrating of the Convention's express purpose. Such a construction must be rejected.

The several parts of a treaty are to be reasonably construed in context, and in relation one to another, so that the whole will operate to give effect to its purpose. A treaty must be liberally construed to give effect to its purpose, and, to that end, if it is susceptible of two constructions, the construction which enlarges the rights which may be claimed under it, is to be preferred over one that would restrict them. Article II of the Convention is properly to be construed as extending its guarantees to citizens of both countries, regardless of their whereabouts.[8]

II

Article II of the Convention has been consistently construed by the Executive and the Congress, and by the other party bound thereby, as extending the rights therein granted to citizens of both countries regardless of their whereabouts. That construction is sup-

[8] It is not controverted that so construed, Article II of the Convention would entitle the petitioners to the same inheritance rights as "native citizens" of the United States, since such rights have been granted by treaty to the citizens of Argentina. See fn. 3, p. 5, *supra*.

ported by the objective sought to be attained by the Convention's American draftsman, negotiator and signatory, and his conclusion that it had been achieved, and, further, by the context in which the language of Article II is found in the British treaty from which it would appear ultimately to have been derived. So construed, Article II of the Convention has been relied on by the United States, and acquiesced in by Yugoslavia, as protecting American rights in Yugoslavia which, under the construction of the Court below, would be wholly unprotected. Such construction is, accordingly, entitled to great weight. Since it is reasonable, and gives effect to the Convention's express purpose, it is its proper construction.

III

Federal policy established by federal action within the constitutional competence of the federal government, will override state policy inconsistent therewith, even if in the absence of such federal action, it would be within the state's constitutional competence to adopt and enforce its own policy. The conduct of foreign affairs, and the regulation of foreign commerce, the value of money and of foreign "coin," are committed by the Constitution exclusively to the federal government, and federal policy in those respects, as established by the adherence of the federal government to the International Monetary Fund Agreement, and its membership in the International Monetary Fund, pursuant to an act of Congress, is that Yugoslavia, also a party to the Agreement and a member of the Fund, may maintain or impose foreign exchange controls consistent with the Agreement.

It is clearly inconsistent with such federal policy so established for a state to deny a citizen and resident of

Yugoslavia rights of inheritance that he would otherwise have under its laws, solely because of the existence in Yugoslavia of foreign exchange controls consistent with the Agreement. Moreover, under the Agreement, the United States has committed itself to consider the foreign exchange regulations of other members of the Fund, consistent with the Agreement, as not offending against its public policy. Such commitment is dishonored if a state may penalize citizens and residents of other countries, members of the Fund, by depriving them of rights which they would otherwise have under its laws, solely because such countries maintain foreign exchange controls consistent with the Agreement.

The Agreement, to which both the United States and Yugoslavia are parties, is such an expression of paramount federal policy within the competence of the federal government as to preclude such state action, even assuming, *arguendo*, that Yugoslavia's foreign exchange regulations, consistent with the Agreement, are applicable to remittances to American beneficiaries of Yugoslav estates of their distributive shares.

ARGUMENT

POINT I

The Express Purpose of the Convention Is to Facilitate and Develop Commercial Relations Between the Two Countries. A Construction of the Convention Which Would Exclude from the Benefits of Article II. Citizens of Either Country Not Within the Other, Would Be Inconsistent With, and Frustrating of Its Purpose, and Must Be Rejected. Considered in Context, and With a View to Effectuating the Convention's Purpose, Article II Must Be Construed as Extending to Citizens of Both Countries Regardless of Their Whereabouts.

Article II of the Convention in pertinent part provides, R 55, App. A, p. 1a, *infra:*

> In all that concerns the right of acquiring, or possessing or disposing of every kind of property, real or personal, *citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy* the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favoured nation.
>
> Within these limits, and under the same conditions as the subjects of the most favoured nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever * * *. [Emphasis supplied]

Couched in identical terms, Article IV of the Convention guarantees that "*citizens of the United States in Serbia and Serbian subjects in the United States* * * * shall have reciprocally free access to the courts of justice" and shall enjoy the same rights as natives, or of citizens of the most favored nation, with respect to "domiciliary visits" to their factories and warehouses, etc. R 56, App. A, p. 2a, *infra.*

Grammatically, the question is whether the words "in Serbia" and "in the United States" are descriptive, respectively, of the location of the "citizens of the United States" and the "Serbian subjects" to whom Articles II and IV guarantee rights, or whether they are descriptive of the places where such citizens and subjects, respectively, are guaranteed to have such rights. As a matter of syntax, the stilted language of this phrase would seem susceptible of either construction, depending upon where the emphasis is put, either arbitrarily, or considering the context in which it is used, and the consequences of reading it one way or the other, viewed in the light of the Convention's purpose.

If the words "in the United States", and as a necessary consequence, the words "in Serbia" are, as the Court below construed them, descriptive of the location of the Serbian subjects and the American citizens to whom alone Article II guarantees rights, then it follows, not only as the Court below held, that citizens of either country remaining at home have no right to inherit property located in the other, but further, that under the Convention they have no right to acquire, or to dispose of property located in the other country by any means whatever, or to possess, or own such property. This consequence of the holding of the Court below is inescapable, for the right of citizens of one country to inherit property located in the other is but one aspect of their right to acquire, and to dispose of such property by the means mentioned in the Convention, "or in any other manner whatever", and to possess, or own, such property. A construction which denies to any category of the citizens of either country the right under the Convention to acquire property located in the other, in any given manner, must, of

necessity, deny to them every right under the Convention to acquire or to dispose of such property in any manner, and any right, as well, to possess or own, such property.

It follows, too, from the holding of the Court below, that citizens of either country who remain at home would not be entitled under Article IV to "free access to the courts of justice" of the other, or to the stipulated freedom from "domiciliary visits" to their factories and warehouses, etc., located in the other.

In short, the construction of the Court below is that the rights provided by the Convention extend to Serbians [*i.e.*, Yugoslavs] only so long as they are within the United States as transients or residents, and to Americans only while similarly in Serbia [*i.e.*, Yugoslavia]. But, the encouragement of neither travel nor emigration is the Convention's purpose, and although such incidental consequences were not unforeseen, it would be unreasonable to construe the Convention as meaning that the rights guaranteed thereby extend only to visitors and emigrants unless, by coincidence, such construction would in fact effectuate the Convention's actual purpose. *Wright* v. *Henkel,* 190 U.S. 40, 57 (1903).

The purpose of the Convention is, expressly, "facilitating and developing the commercial relations" between the two countries, R 54, App. A, p. 1a, *infra,* and its proper construction is, necessarily, one that will give effect to this objective. *DeGeofroy* v. *Riggs,* 133 U.S. 258 (1890); *In re Ross,* 140 U.S. 453 (1891); *Ford* v. *United States,* 273 U.S. 593 (1927); *Todok* v. *Union State Bank,* 281 U.S. 449 (1930); *Santovincenzo* v. *Egan,* 284 U.S. 30 (1931). Conversely,

a construction which is "inconsistent with the general purpose and object" of the Convention, or which would render it "null and inefficient" must necessarily be rejected. *Sullivan* v. *Kidd*, 254 U.S. 433, 440 (1921); *DeGeofroy* v. *Riggs*, *supra*, 133 U.S. at 270. Thus, this Court has repeatedly held that "the accepted canon" requires that a treaty be construed "liberally to give effect to the purpose which animates it" so that even "where a provision of a treaty fairly admits of two constructions, one restricting, the other enlarging rights which may be claimed under it, the more liberal interpretation is to be preferred". *Bacardi Corp.* v. *Domenech*, 311 U.S. 150, 163 (1940); *Shanks* v. *Dupont*, 3 Pet. (U.S.) 242, 249 (1830); *Hauenstein* v. *Lynham*, 100 U.S. 483 (1880); *Jordan* v. *Tashiro*, 278 U.S. 123, 127 (1928); *Nielson* v. *Johnson*, 279 U.S. 47 (1929); *Factor* v. *Laubenheimer*, 290 U.S. 276, 293, 294 (1933).

Commerce between two nations is typically conducted by means of buyers and salesmen of merchants and manufacturers of one country, going to the markets of the other, to purchase commodities needed at home, and to sell wares they have for export,[9] or by means of direct communication, by mail or cable, etc., between prospective sellers in one country and prospective purchasers in the other. Sellers who have established markets abroad, frequently ship their goods to the importing country and warehouse them for their

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[9] Obviously, even where prospective purchasers and sellers are individuals, it is likely to be relatively seldom that the principals themselves would make the buying or selling trip. Certainly, where they are partnerships, it is even more unlikely that all the partners would make the trip. And in the case of corporations, of course, there is no possibility of the principals acting except through agents.

own account, or in their own warehouses, in anticipation of future sales.

In the normal course of commercial relations between any two countries, it will necessarily be contemplated in any given transaction, that the purchaser in the importing country will acquire title to the goods upon their delivery to a common carrier, or dockside, or aboard a vessel, or at some other point in the exporting country, or that the seller will retain title to the goods until some point in time after their arrival in the importing country.[10] Commercial relations between any two countries thus necessarily contemplate that citizens and residents of each country will acquire, possess, and dispose of goods in the other.

So, too, in any given transaction, the sale may be on open account, resulting in credits on the purchaser's books in favor of the seller, available to be drawn against, or the parties may agree to payment by deposit to the seller's account with a bank or merchant in the importing country, by the purchaser's establishment through a bank in his country of a letter of credit in favor of the seller, payable, against draft, as the parties may agree, in one or the other country, or by cash or check in either country. Commercial relations between any two countries thus necessarily contemplate that citizens and residents of each country will acquire credits on the books of citizens and residents of the other, and that such credits may be drawn

[10] Indeed, it may be contemplated both that the buyer will acquire a property interest in the goods before they leave the exporting country, and that the seller will retain a property interest in them until after they arrive in the importing country. See, generally, 2 Williston, *Sales* (Rev. Ed.) §§ 280-286b; Uniform Commercial Code (1957) §§ 2-319—2-324; 2-326; 2-327; 2-401.

against and transferred, by means of drafts or otherwise.

Commercial relations between any two countries must necessarily contemplate, also, the probability of disputes arising with respect to the existence and meaning of contracts and whether they have been breached or fulfilled, the ownership of property and the negotiability of commercial paper, and, further, that commercial activity is seldom without problems of collection.

Thus, it must be clear that if the Convention's purpose of "facilitating and developing" commercial relations between the two countries is to be attained, the right of "acquiring, possessing or disposing of every kind of property," and "to acquire and dispose of such property, whether by purchase, sale, * * * exchange, * * * testament, inheritance, or in any other manner", guaranteed by Article II to citizens of one country with respect to property located in the other, and the "free access to the courts of justice" in one country which Article IV guarantees to citizens of the other, must extend to such citizens without regard to whether they happen to be in one country or the other. For, it is inconceivable that the Convention contemplated, or that its purpose could be achieved if it should be construed as meaning, for example, that a Yugoslav purchaser of American goods for export, had no right to acquire title to them in the United States unless he were in the United States, or that an American exporter of goods to Yugoslavia had no right to possess, or dispose of them there, unless he were in Yugoslavia, too. Nor would it serve to facilitate and develop commercial relations between the two countries to construe Article IV as not granting access to the courts of justice of either country to citizens of the other remaining at home.

The Convention is thoroughly realistic in its coverage of commercial practice. Thus, in its Article III, it was expressly contemplated that there would be, R 55, App. A, p. 1a, *infra:*

> Merchants, manufacturers, and trades people in general of one of the two contracting countries traveling in the other, *or sending thither their clerks and agents—whether with or without samples* —* * * for the purpose of making purchases or sales * * *. [Emphasis supplied]

And, in its Article VII, it was expressly contemplated that there would be, R 56, App. A, p. 2a, *infra:*

> * * * products of the soil or of the industry of Serbia * * * imported into the United States of America, and * * * products of the soil or of the industry of the United States * * * imported into Serbia * * * destined for consumption in the country, for warehousing, for re-exportation or for transit * * *.

It is in this context, of course, that Article II must be read, for "all parts of a treaty are to receive a reasonable construction with a view to giving a fair operation to the whole". *Sullivan* v. *Kidd, supra,* 254 U.S. at 439; *In re Ross, supra,* 140 U.S. at 475. And if, as the Court below held, the words "in the United States" and "in Serbia" are to be taken as meaning that Article II is a guarantee of rights only to Yugoslav citizens who are in the United States, and only to American citizens who are in Yugoslavia, then in large measure is the Convention's purpose frustrated. For, if the Convention be so construed, a citizen of one country, remaining at home and doing business with the other through clerks or agents, or by mail or cable, etc., would be wholly unprotected by Articles II and

IV. He would have no assurance that his heirs, also living at home, would succeed to his property in the other country in the event of his death, and this lack of protection would extend to credit balances resulting from sales, or established in anticipation of purchases, to goods purchased but not yet exported, and to goods shipped but warehoused pending sale or re-exportation. Indeed, a citizen of one country having business with the other, but remaining at home, would have no assurance that he could, in the ordinary course of a commercial transaction, give or acquire title to, or even "possess" goods in the other, or in the event of a dispute, that he would have access to its courts of justice.

In brief, if the narrow construction adopted by the Court below has any validity, citizens of both countries would be left largely without those very guarantees concerning property and civil rights in the other, that are so essential to the relations that the Convention was designed to foster and develop.

Of course, the Convention contemplated that some citizens of each country would visit or reside in the other; but it contemplated, too, that others, necessarily the larger part, would not. It would be unreasonable to suppose that the Convention, concluded for the express purpose of facilitating and developing commercial relations between the two countries, contemplated that citizens of each country would have to travel to the other every time title to property located there was intended to pass to or from them, or else the Convention's guarantees would be of no avail. But that is exactly the result that the construction adopted by the Court below would achieve, and merchants in each country doing business with the other, but remaining

at home, would be wholly unprotected by the provisions of Article II. This is not, of course, to say, that Article II, in terms without limitation in that regard, is applicable only to merchants. *Techt* v. *Hughes,* 229 N.Y. 222, 128 N.E. 185 (1920). But the effect of its application to merchants, construed in one way or the other, is a proper test of whether a construction of the Convention is acceptable as one which would "give effect to the purpose which animates it", *Bacardi Corp.* v. *Domenech, supra,* 311 U.S. at 163, or is to be rejected as one which would render it "null and inefficient". *DeGeofroy* v. *Riggs, supra,* 133 U.S. at 270.

When considered in context, in the light of the Convention's express purpose, and the consequences that would necessarily follow, it is evident that the words "in the United States", and "in Serbia", cannot reasonably be taken as meaning that the rights guaranteed by Article II extend only to citizens of one country who are within the other, and that such construction must be rejected as being "inconsistent with the general purpose and object" of the Convention. *Sullivan* v. *Kidd, supra,* 254 U.S. at 440. The Convention's purpose, and the context in which such words are used, require that these words be interpreted as referring to the places where the rights granted will be enjoyed, and, that Article II be construed as extending to all citizens of both countries, regardless of their whereabouts.

POINT II

The Executive, the Congress and the Other Party Bound by the Convention Have Construed Article II as Granting the Rights Therein Provided to Citizens of Both Countries Regardless of Their Whereabouts, and Their Construction, Which Is Supported by the Convention's History, Is Entitled to Much Weight. It is the Proper Construction of Article II.

Expressly because of the considerations urged under Point I, *supra*, the Secretary of State, in response to a formal inquiry from the Ambassador of Yugoslavia, confirmed in a note dated April 24, 1958 that, App. D, p. 9a, *infra:*

> The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate.

The Secretary of State supported this conclusion as follows, App. D, pp 9a-11a, *infra:*

> * * * The critical words "citizens of the United States in Serbia and Serbian subjects in the United States shall enjoy [certain rights]" as they appear in the first paragraph of Article II may be given at least two plausible interpretations, namely: (1) The words "in Serbia" and "in the United States" may be deemed adjectival, modifying respectively "citizens of the United States"

and "Serbian subjects". (2) The words "in Serbia" and "in the United States" may be deemed adverbial, modifying "shall enjoy". The first of these interpretations would limit the application of the article to the rights of nationals of the one country present in the other. However, a literal reading of the pertinent phraseology in context does not require such a restrictive interpretation. Rather, a liberal interpretation of the ambiguous portion produces a reasonable construction concomant with the spirit of the Treaty as a whole.

* * *

As stated in the preamble thereto, the 1881 Convention was entered into for the purpose of "facilitating and developing the commercial relations established between the two countries". The restrictive view would probably produce results inconsistent with this purpose. For example, a national of one country, also resident therein, wishing to make an *inter vivos* disposition of property belonging to him and located in the other country would have been required to make the long and then arduous trip to the other country to effect the disposition. It seems equally inconsistent with the expressed purpose of the Convention to make an alien's rights of inheritance turn on his location at the time of decedent's death.

Therefore, * * * it appears that the interpretation most consistent with the purpose of the Convention, and with the policy reflected in treaties between the United States of America and other countries, is to interpret the words "in Serbia" and "in the United States" as referring to the place where property rights are granted rather than to the geographical location of the person claiming such rights. As thus construed, the provision would accord to nationals of either party *wherever resident* rights similar to those enjoyed by nationals of the most-favored-nation *wherever resident.*

The Secretary of State also pointed out, App. D, p. 11a, *infra*, that a "review of all relevant correspondence available at the National Archives indicates no intention [on the part of the negotiators] contrary to this interpretation", and that such interpretation was in harmony with American policy as evidenced by similar treaties negotiated in the period. Thus, the Secretary wrote, App. D, p. 10a, *infra:*

> A review of the negotiating history of the 1881 Convention discloses nothing which supports the theory that the Governments of the United States and Serbia intended to provide that only some and not all of the nationals of the respective countries would be entitled to most-favored-nation treatment with respect to the acquisition, possession, and disposition of property. In this connection, it appears to have been the consistent policy of the United States, as reflected in treaties concluded between 1850 and 1890, to accord rights of inheritance and succession to property to nationals of the other contracting party without regard to their residence at the time of the decedent's death.

The complete text of the Secretary's note, and of the Yugoslav Ambassador's note of April 18, 1958, to which it is in reply, both well-considered expositions of Article II of the Convention, are set out in App. D, pp. 7a-20a, *infra*.[11]

This construction of the Convention is not new. Thus, ten years earlier, when in 1948 the United States agreed with Yugoslavia to a settlement of the claims of Amer-

[11] This exchange of notes occurred while Oregon's appeal was pending in the Court below. Copies of the notes were, however, furnished to the Court below. R 104; 349 P.2d at 268. Certified copies of the notes have been lodged with the Clerk by the petitioners.

ican citizens against Yugoslavia for the taking of American property in that country, one of the objectives was to secure assurances for the future. Accordingly, Article 5 of the Settlement Agreement provided, 62 Stat. 2658; T.I.A.S. 1803; R 52, 53:

> The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881.

The Congress considered this provision as obliging Yugoslavia "to continue to grant most-favored-nation treatment *to Americans in ownership and acquisition of assets in Yugoslavia*",[12] and it must be obvious that the United States would not have been content with a mere reference to the Convention if it had been considered that Article II, its property-rights provision, applied only to such few Americans as were, or were likely to be in Yugoslavia. But the decision of the Court below, if allowed to stand, may reduce the 1948

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[12] See S.Rep. No. 800, 81st Cong. 2d Sess., p. 4 and H.Rep. No. 770, 81st Cong., 1st Sess., p. 4. The identical statement was made by the Senate Foreign Relations Committee and the House Foreign Affairs Committee in reporting favorably on the bill that became the International Claims Settlement Act of 1949, 64 Stat. 12, Tit. 22 U.S.C. Sec. 1621, *et seq.*, under which the claims against Yugoslavia were adjudicated, and the proceeds of the settlement distributed.

guarantee to just that, even though Yugoslavia, too, has considered it as extending to all Americans, whether in Yugoslavia or not. App. D, pp. 15a-17a, *infra*. R 15, 21-23, 31-35, 46, 63-67.

Moreover, the construction placed upon Article II by the Congress, the State Department and Yugoslavia is exactly that of Eugene Schuyler, its American draftsman, negotiator and signatory, who, in commenting on it in an official report to the Department of State, transmitted March 29, 1883, said:

> By Commercial and Consular treaties lately concluded, *citizens of the United States have in Serbia* all the rights and privileges enjoyed by subjects of other nations.[13] [Emphasis supplied]

Thus, Schuyler, too, clearly considered that the words "in Serbia" (and, necessarily, the words "in the United States") as used in the treaty he drafted, negotiated and signed, described where the enjoyment of the stipulated rights was guaranteed, rather than the location of the Americans (and the Serbians, respectively) who would enjoy them.

The apparent source of the awkward phraseology of the Convention, and the context in which it was originally used, serve to explain the relative obscurity of the language Schuyler used in his treaty, as compared with the clarity of his report.

On February 7, 1880, a Treaty of Friendship and Commerce had been concluded between Great Britain

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[13] Report No. 2, Serbian Consular Series, March 29, 1883, a certified copy of which has been lodged with the clerk by the petitioners. The Consular treaty, 22 Stat. 968, Tr. Ser. 320, 2 Malloy, *Treaties*, etc. 1618, was concluded simultaneously with the Convention.

and Serbia. XV Hertslet, *Treaties and Conventions* (1885) 342-347. That Schuyler was familiar with the Anglo-Serbian treaty, and turned to it in drafting and negotiating the Convention, appears clearly from his dispatch of April 30, 1881 to the Secretary of State, in which he said:

> Referring to your despatch * * * dated April 12th, on the subject of negotiations for a Commercial Treaty with Serbia, * * * in my opinion it is for the interest of American commerce to conclude conventions with Serbia by which *Americans will be placed on the same footing as the subjects of other countries*, both as regards commercial facilities and the protection which they can receive from the laws * * *. * * *
>
> * * * [I]t would be best for the * * * United States to see that its citizens enjoy the same *rights and privileges in Serbia* as do the subjects of other powers * * *. * * *
>
> A commercial treaty with Serbia has been concluded by Great Britain * * *. * * *
>
> As to the commercial treaty, in my opinion the best form would be that that I have just concluded with Roumania, omitting articles 11 to 16 inclusive and inserting two articles similar to articles 11 and 12 *in the British treaty with Serbia* * * *. * * * I see no objection to Mr. Kasson's draft omitting articles 2, 3, and 6, and adding articles similar to 11 and 12 *of the British treaty* as mentioned above.[14] [Emphasis supplied

The treaty Schuyler had concluded with Roumania (which Roumania failed to ratify) is, insofar as con-

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[14] Dispatch No. 66, Roumanian Diplomatic Series, April 30, 1881, a certified copy of which has been lodged with the Clerk by the petitioners. The language of Articles 11 and 12 of the British treaty appears almost verbatim in Articles XI and XIII, respectively, of the Convention.

cerns the phraseology here in question, the same as the Convention. 75 *Regular Confidential Printed Documents before the Senate of the United States in Executive Session* (1915), 894. Accordingly, Schuyler must have been satisfied that its phraseology, transposed into a treaty with Serbia, would place Americans "on the same footing," and guarantee that they would "enjoy the same rights and privileges in Serbia," as British subjects under the Anglo-Serbian treaty, "as regards commercial facilities and the protection they can receive from the laws * * *." This is confirmed by his 1883 statement, p. 33, *supra*, that under the Convention "citizens of the United States *have in Serbia* all the rights and privileges enjoyed by subjects of other nations".

The significance of Schuyler's use of the Anglo-Serbian treaty lies in the circumstance that in its provisions relating to property and civil rights, the exact counterpart of the phrase here in question was used. There, however, it appeared in apposition to another phrase which foreclosed any possibility of ambiguity. Thus, the *first* paragraph of Article I of the Anglo-Serbian treaty, XV Hertslet, *loc. cit., supra*, p. 34, provided:

> Art. 1 *British subjects who reside temporarily or permanently in Servia, and Servian subjects who reside temporarily or permanently in the territories * * * of Her Britannic Majesty, shall enjoy therein* with respect to residence and the exercise of commerce and trade, the same rights as, and shall not be subject to any higher or other imposts or taxes * * * than natives, or the subjects of any other country the most favoured in this respect by either of the Contracting Parties. [Emphasis supplied]

But in the *second* paragraph of Article I, and in Articles II and IX of the Anglo-Serbian treaty, quite different phraseology was used by its draftsmen, who, obviously, knew how to limit a guarantee of rights to residents and sojourners. Thus, these provisions read:

> Art. 1 * **
>
> *British subjects in Servia, and Servian subjects in the territories * * * of Her Britannic Majesty, shall enjoy* the same treatment as natives, or as is now granted, or may hereafter be granted, to the subjects of any other country the most favoured in this respect, *with regard to the acquisition, the holding, and the disposal of property,* and all charges on it, with regard *to access to Courts of Law and in the prosecution and defence of their rights,* and in regard *to domiciliary visits* to their dwellings, manufacturies, warehouses, or shops. * * *
>
> Art. II * * * in all that relates to local dues, customs formalities, brokerage, patterns, or samples introduced by commercial travellers, and all other matters connected with trade, *British subjects in Servia, and Servian subjects in the territories * * * of Her Britannic Majesty, shall enjoy* most-favoured-nation treatment.
>
> * * *
>
> Art. IX *British subjects in Servia and Servian subjects in the territories * * * of Her Britannic Majesty, shall enjoy* the same rights as natives, or as are now granted, or may hereafter be granted, to the subjects of any third Power the most favoured in this respect in everything relating to the property in trade marks and trade labels or tickets, as well as in patterns and designs for manufactures. * * * [Emphasis supplied]

Certainly, if by "British subjects in Servia, and Servian subjects in the territories * * * of Her Britannic Majesty", only the subjects of one country "who reside temporarily or permanently" in the other were meant, the single word *"they"* would have sufficed for the whole of the quoted phrase in the second paragraph of Article I, and the quoted portion of Article II would have been largely superfluous as already covered by the *first* paragraph of Article I. Furthermore, with reference to Article IX, is it probable that the marks, labels, patterns and designs of British residents and sojourners in Servia *only* were intended to be protected from infringement, while those of the great manufacturing and exporting houses of Manchester, Birmingham and Sheffield were not?

Thus, as used in the Anglo-Serbian treaty, the meaning of the phrase "British subjects in Servia, and Servian subjects in the territories * * * of Her Britannic Majesty" appears not only from the immediate context in which it is found, but from its use in contrast with the phrase "British subjects who reside temporarily or permanently in Servia, and Servian subjects who reside temporarily or permanently in the territories * * * of Her Britannic Majesty". In weighing the rights granted by the Convention, as against those granted by the Anglo-Serbian treaty, it was possibly not foreseen that the absence from the Convention of some contrasting phrase such as the latter, might leave latent a question as to the meaning of "citizens of the United States in Serbia and Serbian subjects in the United States".[15] However, Schuyler's report makes

[15] As noted above, Schuyler indicated in his dispatch of April 30, 1881, to the State Department that he considered his Roumanian treaty the best form to follow, and that the phraseology here

it clear that the phrase was used in the Convention in the broad sense of its counterpart in the Anglo-Serbian treaty, and is not to be given the narrow meaning of the other phrase, omitted from the Convention, with which it was there used in contrast. Certainly, if the narrow meaning be attributed to it, then, Schuyler failed in his objective, which he confidently believed that he had attained, of concluding a treaty which accorded to Americans "rights and privileges in Serbia" no less than those enjoyed by citizens of any other country.

Moreover, from his dispatch of April 30, 1881, p. 34, *supra*, it is clear that in negotiating and drafting the Serbian treaties of 1881, Schuyler's concern was American *"rights and privileges in Serbia"*, rather than the rights and privileges of the few, if any, *Americans in Serbia*. Thus, he wrote:

> * * * In consideration * * * that Serbian legislation and courts * * * are based on French and

in question may also be found in that treaty, which, however, never came into force. In this connection, it should be noted that on April 5, 1880, an Anglo-Roumanian Treaty of Commerce and Navigation was concluded, XV Hertslet, *Treaties and Conventions* (1885) 314, and that during his Roumanian negotiations, Schuyler familiarized himself with it. See, Brief for the United States as *Amicus Curiae*, submitted on the petition for certiorari herein, p. 10. So far as is pertinent here, the phraseology of the Anglo-Roumanian treaty is like that of the Convention, and the language of the first paragraph of Article I of the Anglo-Serbian treaty does not appear in it. It reappears, however, in the Anglo-Montenegrin Treaty of Friendship, Commerce and Navigation of January 21, 1882. XV Hertslet, *op. cit. supra*, 240. The Anglo-Serbian treaty of February 7, 1880, was, however, the earliest of the group, and would seem to have set the pattern, although it appears from the dispatch cited that the trademark provisions of the Convention's Article XII probably resulted from "precise instructions" from Washington.

> Austrian models, that England and Italy have given up the capitulations, and that *there are few or no Americans residing in Serbia*, I think we could safely abandon all claims of consular jurisdiction * * *. [Emphasis supplied]

The construction of the Convention advanced by the petitioners is, thus, one which is supported by the Convention's background. Moreover, in negotiations with Yugoslavia for the protection of the property rights in that country of all Americans everywhere, the Executive relied on the Convention so construed, and so construed, the Convention has been accepted by the Congress, in enacting legislation, as protecting such rights. Yugoslavia, the other party bound by the Convention, has concurred with the Executive and the Congress in this construction. If construed as the Court below has construed it, the Convention would protect the property rights in Yugoslavia only of such Americans as may be in that country. In these circumstances, the construction for which the petitioners contend is entitled to great weight. *Sullivan* v. *Kidd, supra*, 254 U.S. at 442; *Charlton* v. *Kelly*, 229 U.S. 447, 468 (1913); *Factor* v. *Laubenheimer, supra*, 290 U.S. at 295; *Pigeon River Improvement, Slide & Boom Co.* v. *Charles W. Cox Ltd.*, 291 U.S. 138 (1934); *United States* v. *Reid*, 73 F.2d 153, 156 (9th Cir.) (1934), cert. denied 299 U.S. 544; American Law Institute, *Restatement of the Foreign Relations Law of the United States* (Tentative Draft No. 3, 1959) § 136. Unlike the construction adopted by the Court below, this construction is reasonable, it takes into account the context in which the disputed words appear, and gives effect to the express purpose of the Convention.

It should be held by this Court to be the Convention's proper construction.

POINT III

The Denial of Inheritance Rights to the Petitioners Because of the Existence in Yugoslavia of Foreign Exchange Controls Consistent With the International Monetary Fund Agreement, to Which Both the United States and Yugoslavia Are Parties, Is Inconsistent With Federal Policy Established by Federal Action Within the Exclusive Constitutional Competence of the Federal Government. Such Federal Policy Will Override State Policy Inconsistent Therewith.

Some sixty-eight nations, including the United States and Yugoslavia, are parties to the International Monetary Fund Agreement, and members of the International Monetary Fund which it established. International Monetary Fund, *Eleventh Annual Report, 1960,* vii-ix. The United States became a party to the Agreement and a member of the Fund pursuant to § 2 of the Bretton Woods Agreements Act, 59 Stat. 512, Tit. 22 U.S.C. § 286.

Article VI, § 3, of the Agreement in pertinent part provides, R 59, App. B, p. 3a, *infra:*

> Members may exercise such controls as are necessary to regulate international *capital* movements, but no member may exercise these controls in a manner which will restrict payments for *current* transactions * * *. [Emphasis supplied]

Article XIV, § 2, of the Agreement in pertinent part provides, R 61, App. B, p. 4a, *infra:*

> In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the

enemy, introduce where necessary) restrictions on payments and transfers for *current* international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purpose of the Fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund. [Emphasis supplied] [16]

Under these provisions, all except a small minority of the signatories to the Agreement, members of the Fund, have maintained or imposed foreign exchange controls which vary in stringency and extent from country to country, and from time to time, in accordance with economic circumstances and needs. See, International Monetary Fund, *Eleventh Annual Report, 1960,* 1-12, and generally.

Inheritances are, of course, "capital", and under the Agreement, international transfers of inherited

[16] Under Article XIV, § 4, a member maintaining or introducing controls under this provision, *i.e.*, with respect to *current* transactions, must consult with the Fund periodically concerning them, and the Fund may require a member to withdraw any control it considers to be inconsistent with the Agreement. Recalcitrance invites ineligibility to use the resources of the Fund, or expulsion, as provided in Article XV, § 2. R 61, 62, App. B, pp. 4a, 5a, *infra*. There is no such provision with respect to restrictions on *capital* transfers imposed or maintained under Article VI, § 3.

funds are "capital transfers" over which members of the Fund "may exercise such controls as are necessary to regulate international capital movements", as Article VI, § 3, *supra*, specifically provides.[17] Indeed, under Article VI, § 1, R 59, App. B, p. 3a, *infra*, members may be subject to sanctions under some circumstances, if they do not impose such controls. That the full significance of Article VI, § 3, of the Agreement was clearly understood is clear. Thus, in the course of the hearings on the bill to authorize the United States to become a party to the Agreement and a member of the Fund, the following colloquy occurred:

> SENATOR TAFT. I would like to just read from Lord Keynes' statement on the subject:

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[17] Article XIV governs controls on "current transactions", as distinguished from "capital movements". Current transactions are defined in Article XIX, ¶ (i) as "payments • • • not intended for the purpose of transferring capital", such as payments incident to the purchase and sale of goods, payments of the net income on investments, including interest on loans, of moderate amounts for living expenses, etc. R 62, 63, App. B, pp. 5a, 6a, *infra*. Thus, in reporting on Yugoslavia's exchange controls, the Fund commented as follows under the heading "Capital", International Monetary Fund, *Eleventh Annual Report*, 1960, p. 352:

> All transfers of a *capital* nature by residents or nonresidents are subject to individual license. • • • A Decision of the Yugoslav Federal Executive Council of October 14, 1955 *requires* the Yugoslav authorities to continue to permit the remittance of inheritances to citizens of the United States, provided that the remittance is requested within three years from the date of distribution of the estate. [Emphasis supplied]

The "Decision" referred to was rendered in connection with the transfer of the administration of the foreign exchange controls from one agency to another. The substantive ruling dates back to prior to 1953. R 21-23, 70.

> Not merely as a feature of the transition but as a permanent arrangement, *the plan accords to every member government the explicit right to control all capital movements.* * * * In my own judgment, countries which avail themselves of this right may find it necessary to scrutinize all transactions, so as to prevent evasion of capital regulations. Provided that the innocent current transactions are let through, there is nothing in the plan to prevent this. In fact, it is encouraged. * * *
>
> The point I want to make is that it seems to me *not only is it permitted to the government but, in order to carry out the functions of the fund, I think they have to control the capital movements* and will find it necessary, as Lord Keynes says, to scrutinize the transaction so as to prevent the evasion of capital regulations.
>
> MR. ACHESON. I think you just happen to be wrong about that, Senator Taft. As Lord Keynes says, *it is right which is given to the country.* It is also something they may be called upon to do if there is flight of capital and if they still wish to come to the fund.[18] [Emphasis supplied]

[18] Hearings before the Senate Committee on Banking and Currency, on H.R. 3314, 79th Cong., 1st Sess., p. 32. Keynes acknowledged that "it is an objection to this [*i.e.*, the right to restrict capital transfers] that control, if it is to be effective, probably requires the machinery of exchange control for *all* transactions * * *". Halm, *op. cit. supra*, p. 15, at 136. Put otherwise, the effective enforcement of exchange controls applicable to limited types of transactions, may require the scrutiny of all transactions. Yugoslavia apparently found this to be so. Thus, in respo to an inquiry directed specifically to the transfer to the United States of the distributive shares of Americans in Yugoslav estates, Yugoslavia advised the United States on October 21, 1953, that "pursuant to paragraph 3, Art. II of the Agreement of 1881", *i.e.*, the Convention, "it settles favorably all the claims of American citizens" in that regard. It was pointed out that although it was

Thus, while it may have been disputed whether the regulation of capital transfers would, as a practical matter, require the scrutiny of all transfers, there was complete accord that under the Agreement every member of the Fund would have the *right* freely to impose restrictions on capital transfers.

By becoming a party to the Agreement, and a member of the Fund, the United States, by the very terms of the Agreement itself, gave its recognition and acceptance to foreign exchange controls maintained or imposed consistently with the Agreement by other members of the Fund. Thus, Article VIII, § 2(b), of the Agreement in pertinent part provides, R 60, App. B, pp. 3a, 4a, *infra:*

> Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. * * *

Pursuant to its authority under Article XVIII of the Agreement, the Fund's Board of Executive Directors has interpreted this provision as follows:[19]

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necessary under the regulations to apply for a permit to make a "free transfer" this was not "in contradiction with the Convention of 1881" since such transfers were unhindered in accordance with "paragraph 3, Art. II of the Agreement of 1881." R 46-48; 43-46. See, pp. 10-14, *supra.*

[19] International Monetary Fund, *Annual Report, 1949,* App. XIV, pp. 82, 83; Federal Register, August 19, 1949, pp. 5208-9. Article XVIII provides, 60 Stat. at 1423, T.I.A.S. 1501, p. 25, in pertinent part:

> (a) Any question of interpretation of the provisions of this Agreement arising between any member and the Fund

The meaning and effect of this provision are as follows:

1. Parties entering into exchange contracts involving the currency of any member of the Fund and contrary to exchange control regulations of that member which are maintained or imposed consistently with the Fund Agreement will not receive the assistance of the judicial or administrative authorities of other members in obtaining the performances of such contracts. That is to say, the obligations of such contracts will not be implemented by the judicial or administrative authorities of member countries, for example, by decreeing performance of the contracts or by awarding damages for their non-performance.

2. By accepting the Fund Agreement members have undertaken to make the principle mentioned above effectively part of their national law. * * *

An obvious result of the foregoing undertaking is that if a party to an exchange contract of the kind referred to in Article VIII, section 2(b) seeks to enforce such a contract, the tribunal of the member country before which the proceedings are brought will not, on the ground that they are contrary to the public policy * * * of the forum, refuse recognition of the exchange control regulations of the other member which are maintained or imposed consistently with the Fund Agreement. It also follows that such contracts will be treated as unenforceable notwithstanding that under the private international law of the forum, the law under which the foreign exchange control regulations are maintained or imposed is not the law

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or between any members of the Fund shall be submitted to the Executive Directors for their decision * * *.

For a discussion of this authority, see Gold, *The Interpretation by the International Monetary Fund of its Articles of Agreement*, 3 Int. & Comp. L.Q. 256 (1954).

which governs the exchange contract or its performance.

In other words, under the Agreement itself, every party to it has committed itself to recognize as valid, and to give effect to the foreign exchange regulations of other members of the Fund, which are consistent with the Agreement, and not to consider any such exchange regulations as offending against its public policy. And, in becoming a party to the Agreement and a member of the Fund, the United States *expressly* made that commitment, and assented to the *right* of members of the Fund under Article VI, § 3 of the Agreement, *supra*, p. 40, to impose restrictions on capital transfers, including inheritances of American citizens.

It is patently incompatible with the constitutional supremacy of federal policy and action within the competence of the federal government, for a state to deny the *right* of members of the Fund to restrict capital transfers, or to maintain other controls consistent with the Agreement, by refusing rights of inheritance, which they would otherwise have under its laws, to citizens of parties to the Agreement, members of the Fund, which maintain such controls. For, the federal government's action in becoming a party to the Agreement, and a member of the Fund, was clearly an exercise of its exclusive authority to conduct foreign affairs, and to regulate commerce with foreign nations and the value of money and foreign "coin".[20] The Agreement

[20] See *e.g.*, §§ 5, 14 Bretton Woods Agreements Act, 59 Stat. at 514, 517, Tit. 22 U.S.C. §§ 286c, 286k. See also, Articles I and IV of the Agreement, 60 Stat. at 1401, 1403, T.I.A.S. 1501 at pp. 1, 3.

is thus an expression and implementation of paramount federal policy, which necessarily will override any state policy which would be "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in authorizing the United States to become a party to it. *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941); *Takahashi* v. *Fish and Game Commission*, 334 U.S. 410 (1948); *Oyama* v. *California*, 332 U.S. 633 (1948); *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U.S. 767 (1947); *Hill* v. *Florida ex rel. Watson*, 325 U.S. 538 (1945); *Cf. Truax* v. *Raich*, 239 U.S. 33 (1915).

As an expression and implementation of paramount federal policy, the Agreement is of no less dignity or force than what was involved in *United States* v. *Pink*, 315 U.S. 203 (1942), and the application to these petitioners of the Oregon statute for the reason given by the Court below, is no less an attempt by a state to rewrite federal policy to conform to its domestic policy, than was the action of New York there condemned. *Perutz* v. *Bohemian Discount Bank*, 304 N.Y. 533, 110 N.E. 2d 6 (1953). Thus, in *Pink*, this Court said, 315 U.S. at 231, 232, 233:

> Enforcement of New York's policy as formulated by the Moscow case would collide with and subtract from the Federal policy * * *. For the Moscow case refuses to give effect or recognition in New York to acts of the Soviet Government which the United States * * * agreed no longer to question. * * *
>
> * * * Here we are dealing with an exclusive federal function. If state laws and policies did not yield before the exercise of the external powers of the United States, then our foreign policy might be

> thwarted. * * * If state action could defeat or alter our foreign policy, serious consequences might ensue. * * *
>
> * * * No state can rewrite our foreign policy to conform to its own domestic policies. Power over external affairs is not shared by the States; it is vested in the national government exclusively.

It would be no less frustrating of federal policy, constitutionally paramount, and no less fraught with serious international consequences, to permit each of the fifty states to penalize members of the Fund which exercise rights guaranteed to them by the Agreement with the express consent of the United States, by depriving their citizens, for that reason alone, of rights they would otherwise have under State laws. The United States, as we have seen, is committed to the proposition that foreign exchange restrictions imposed or maintained by members of the Fund consistently with the Agreement, do not offend against its public policy. But that commitment would be a hollow sham, more honored in the breach than the observance, if the fifty states were free to curtail rights under their laws of citizens of members of the Fund, because they maintain or impose such restrictions. That the United States has specifically consented to such restrictions by an international agreement expressly sanctioned by the Congress, necessarily precludes the states from considering them as so offending against their public policy as to entail a deprivation of rights. *Cf. Perutz v. Bohemian Discount Bank, supra.*

Nor is federal policy with respect to Yugoslavia's foreign exchange controls evidenced only by the Agreement. Thus, Article II of the Economic Cooperation

Agreement of 1952 between the United States and Yugoslavia, T.I.A.S. 2384,[21] provides that

> 1. In order to achieve the maximum economic strength through the employment of assistance received from the Government of the United States of America, the Government of the Federal People's Republic of Yugoslavia will use its best endeavors:
>
> * * *
>
> (c) to assure the stability of its currency, the validity of its rate of exchange, and its internal financial stability.

This provision was included in such agreement in compliance with the express statutory requirement, Tit. 22 U.S.C. § 1513(b)(2), that foreign economic cooperation agreements provide for the taking by the recipient country of

> * * * financial and monetary measures necessary to stabilize its currency, establish or maintain a valid rate of exchange * * * and generally to restore or maintain confidence in its monetary system * * *.

Obviously, such "endeavors" and "measures" must include, when appropriate to the achievement of the required ends, the regulation of foreign exchange transactions, particularly capital transfers.

Regardless of the effect[22] of the foreign exchange controls that Yugoslavia maintains consistently with the Agreement, the holding of the Court below that

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[21] Entered into pursuant to Public Law 472, 80th Cong., as amended, 60 Stat. 137, Tit. 22 U.S.C. Sec. 1501 *et seq.*

[22] *I.e.*, whether the controls apply to transfers to the United States of the distributive shares of Americans in Yugoslav estates. See, pp. 10-14, *supra*.

these petitioners may not inherit under Oregon's statute because of them, transgresses against paramount federal policy established by federal action within the competence of the federal government. Oregon's policy as reflected in paragraph (1)(b) of § 111.070 must yield to overriding federal policy.

CONCLUSION

The principal issue here involved is the meaning of Article II of the Convention. If, as the petitioners contend, Article II is properly to be construed as the Executive, the Congress and Yugoslavia have construed it—as applying to citizens of both countries without regard to their whereabouts—that will end the matter, for, then, the petitioners' rights of inheritance under the Convention will override all of Oregon's statute.

If, however, the decision on that issue should be adverse to the petitioners' contention, there will remain for decision the narrower issue as to the competence of Oregon to deny to these petitioners rights of inheritance they would otherwise have under its laws, solely because of the maintenance of foreign exchange controls consistent with the International Monetary Fund Agreement by the country of which they are citizens and residents. If the principal issue and this issue should both be determined contrary to the petitioners' contentions, that will also end the matter. However, if the principal issue should be determined adversely to the petitioners, but the narrower issue as they contend, there will remain for decision by the Court below, two issues under the Oregon statute which it expressly left undecided. R 104, 105; 349 P.2d at 268.

The consequences of this Court's decision on either or both of the two issues will necessarily be far-reaching. The first issue involves not only the right of these petitioners, and their fellow citizens, to inherit property in the United States, but the efficacy of the Convention's whole scheme for assuring property rights and civil rights in one country to citizens of the other. The second issue involves consequences not only for citizens and residents of the petitioners' country, but also for citizens and residents of the many members of the International Monetary Fund which maintain foreign exchange controls consistent with the Agreement.

The decrees of the Court below should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX A [R 54-57]

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND SERBIA, FOR FACILITATING AND DEVELOPING COMMERCIAL RELATIONS.

* * *

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named * * * their respective plenipotentiaries * * *

Who * * * have agreed upon and concluded the following articles:

* * *

ARTICLE II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever * * *.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general * * *.

ARTICLE III.

Merchants, manufacturers, and trades people * * * of one of the two contracting countries traveling in the other, or sending thither their clerks and agents—whether with or without samples— * * * for the purpose of making purchases or sales * * * shall be treated with regard

to their licenses, as the merchants, manufacturers and trades people of the most favored nation. * * *

ARTICLE IV.

Citizens of the United States in Serbia and Serbian subjects in the United States shall be reciprocally exempted from all personal service, whether in the army by land or by sea * * *.

They shall have reciprocally free access to the courts of justice on conforming to the laws of the country, both for the prosecution and for the defence of their rights in all the degrees of jurisdiction established by the laws. They can employ in every case advocates, lawyers and agents of all classes authorized by the law of the country, and shall enjoy in this respect, and as concerns domiciliary visits to their houses, manufactories, warehouses or shops, the same rights and advantages as are or shall be granted to the natives of the country, or to the subjects of the most favored nation. * * *

* * *

ARTICLE VII.

The products of the soil or of the industry of Serbia which shall be imported into the United States of America, and the products of the soil or of the industry of the United States which shall be imported into Serbia, and which shall be destined for consumption in the country, for warehousing, for re-exportation or for transit, shall be subjected to the same treatment, and shall not be liable to other or higher duties than the products of the most favored nation.

* * *

Done * * * this 2-14 day of October, 1881.

EUGENE SCHUYLER
CH. MIJATOVICH

* * *

APPENDIX B [R 57-63]

INTERNATIONAL MONETARY FUND AGREEMENT

* * * *

ARTICLE VI. CAPITAL TRANSFERS

SECTION 1. *Use of the Fund's resources for capital transfers.*—(*a*) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund.

SEC. 2. *Special provisions for capital transfers.* * * *

SEC. 3. *Controls of capital transfers.*—Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3 (*b*), and in Article XIV, Section 2.

ARTICLE VIII. GENERAL OBLIGATIONS OF MEMBERS

SECTION 1. *Introduction.*—In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

SEC. 2. *Avoidance of restrictions on current payments.* * * *

(*b*) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members

may, by mutual accord, co-operate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

* * * *

ARTICLE XIV. TRANSITIONAL PERIOD

SECTION 1. *Introduction.* * * * *

SEC. 2. *Exchange restrictions.*—In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the Fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund.

SEC. 3. *Notification to the Fund.* * * *

SEC. 4. *Action of the Fund relating to restrictions.*—Not later than three years after the date on which the Fund begins operations and in each year thereafter, the Fund shall report on the restrictions still in force under Section 2 of this Article. Five years after the date on which the Fund begins operations, and in each year thereafter, any member still retaining any restrictions inconsistent with Article VIII, Sections 2, 3, or 4, shall consult the Fund as to their further retention. The Fund may,

if it deems such action necessary in exceptional circumstances, make representations to any member that conditions are favorable for the withdrawal of any particular restriction, or for the general abandonment of restrictions, inconsistent with the provisions of any other article of this Agreement. The member shall be given a suitable time to reply to such representations. If the Fund finds that the member persists in maintaining restrictions which are inconsistent with the purposes of the Fund, the member shall be subject to Article XV, Section 2 (*a*).

SEC. 5. *Nature of transitional period.*—In its relations with members, the Fund shall recognize that the post-war transitional period will be one of change and adjustment and in making decisions on requests occasioned thereby which are presented by any member it shall give the member the benefit of any reasonable doubt.

ARTICLE XV. WITHDRAWAL FROM MEMBERSHIP

SECTION 1. *Right of members to withdraw.* • • •

SEC. 2. *Compulsory withdrawal.*—(*a*) If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the resources of the Fund. • • •

(*b*) If, after the expiration of a reasonable period the member persists in its failure to fulfill any of its obligations under this Agreement • • • that member may be required to withdraw from membership in the Fund • • •

• • •

ARTICLE XIX. EXPLANATION OF TERMS

In interpreting the provisions of this Agreement the Fund and its members shall be guided by the following:

• • • •

(*i*) Payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitation:

(1) All payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;

(2) Payments due as interest on loans and as net income from other investments;

(3) Payments of moderate amount for amortization of loans or for depreciation of direct investments;

(4) Moderate remittances for family living expenses.

The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

* * *

APPENDIX C [R 83,84]

Oregon Revised Statutes

Section 114.070

(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in

this state without confiscation, in whole or in part, by the governments of such foreign countries.

(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property.

APPENDIX D

The Secretary of State presents his compliments to the Charge d'Affaires ad interim of the Federal People's Republic of Yugoslavia and acknowledges the receipt of the Embassy's note No. 4298 of April 18, 1958, regarding the interpretation of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation), concluded on October 2/14, 1881 between the United States of America and Serbia and presently in force between the United States of America and Yugoslavia. (22 Statutes at Large 963, Treaty Series 319.)

According to the Embassy's note, the Government of Yugoslavia considers that, by virtue of Article II of the 1881 Convention, citizens of the United States are entitled to most-favored nation treatment with respect to the acquisition, possession, or disposition of property in Yugoslavia whether they reside in Yugoslavia or elsewhere and, in the case of inheritance, regardless of the decedent's nationality. With particular reference to inheritance, the Embassy states that, in accordance with this construction of Article II of the 1881 Convention, United States citizens, regardless of their residence or of the decedent's nationality, are entitled to and do actually enjoy the same rights as Yugoslav nationals with respect to the inheritance of property in Yugoslavia. This, as the note points out, is in consequence of the fact that United States citi-

zens, wherever resident, are accorded in Yugoslavia treatment no less favorable than that accorded in Yugoslavia to nationals of Poland under Article 23 of the Treaty Regarding Legal Relations concluded on May 4, 1923 between Yugoslavia and Poland, whereby Polish nationals, irrespective of their residence, are accorded national treatment (that is, the same treatment as Yugoslav nationals) in regard to the succession to and possession of property in Yugoslavia.

The Embassy's note cites Article IX of the Treaty of Friendship, Commerce and Navigation of July 27, 1853 between the United States of America and Argentina, which contains a national-treatment provision similar in substance to the provision in Article 23 of the 1923 treaty between Yugoslavia and Poland. The note indicates that, by the application of such provision together with the most-favored-nation provision in Article II of the 1881 Convention, Yugoslav nationals are entitled to and should be accorded, whether they reside in the United States or elsewhere and regardless of the decedent's nationality, the right to acquire, possess, or dispose of property in the United States.

The Embassy's note further states that the Yugoslav Government, pursuant to the third paragraph of Article II of the 1881 Convention, accords to American citizens, wherever they reside, the right to withdraw and have transferred to them moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The Embassy's note called attention to the agreement of July 19, 1948 between the United States of America and Yugoslavia regarding the settlement of pecuniary claims against Yugoslavia, and particularly to Article 5 of that agreement which has the effect of confirming that Article II of the 1881 Convention is interpreted as according rights in regard to property in one or the other of the two countries irrespective of the place of residence of the nationals concerned or of the decedent's nationality.

The Embassy's note inquired whether the United States Government concurs with the Yugoslav Government's interpretation of Article II of the 1881 Convention, particularly as applied to the rights of Yugoslav nationals who do not reside in the United States. It appears that the Embassy's inquiry is prompted by indications that some State attorneys general in the United States are tending toward the adoption of a contrary view. The note refers to a statement by the Supreme Court of California in the case of In re Arbulich's Estate, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897 (1953).

It is well to bear in mind a general principle applied in the United States, namely, that although an expression of opinion by the Department of State with respect to the interpretation of a treaty provision will normally be given considerable weight by the courts, such an expression of opinion is not binding on the courts.

The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate.

Article II of the 1881 Convention is quoted in the Embassy's note, so it will not be set forth here. The critical words "citizens of the United States in Serbia and Serbian subjects in the United States shall enjoy [certain rights]" as they appear in the first paragraph of Article II may be given at least two plausible interpretations, namely: (1) The words "in Serbia" and "in the United States" may be deemed adjectival, modifying respectively

"citizens of the United States" and "Serbian subjects". (2) The words "in Serbia" and "in the United States" may be deemed adverbial, modifying "shall enjoy". The first of these interpretations would limit the application of the article to the rights of nationals of the one country present in the other. However, a literal reading of the pertinent phraseology in context does not require such a restrictive interpretation. Rather, a liberal interpretation of the ambiguous portion produces a reasonable construction consonant with the spirit of the Treaty as a whole.

Under the first, or restrictive interpretation, an American citizen residing in Yugoslavia would be accorded under the most-favored-nation provision whatever rights in respect of the acquisition, possession, or disposition of property in Yugoslavia were accorded to nationals of a third country (for example, Poland under the 1923 treaty which the note cites) who were resident therein. However, American citizens outside Yugoslavia would not be accorded rights similar to rights under Yugoslav law enjoyed by Polish nationals who were not resident therein.

A review of the negotiating history of the 1881 Convention discloses nothing which supports the theory that the Governments of the United States and Serbia intended to provide that only some and not all of the nationals of the respective countries would be entitled to most-favored-nation treatment with respect to the acquisition, possession, and disposition of property. In this connection, it appears to have been the consistent policy of the United States, as reflected in treaties concluded between 1850 and 1890, to accord rights of inheritance and succession to property to nationals of the other contracting party without regard to their residence at the time of the decedent's death.

As stated in the preamble thereto, the 1881 Convention was entered into for the purpose of "facilitating and developing the commercial relations established between the two countries". The restrictive view would probably produce results inconsistent with this purpose. For example,

a national of one country, also resident therein, wishing to make an *inter vivos* disposition of property belonging to him and located in the other country would have been required to make the long and then arduous trip to the other country to effect the disposition. It seems equally inconsistent with the expressed purpose of the Convention to make an alien's rights of inheritance turn on his location at the time of decedent's death.

Therefore, in the absence of clear and unmistakable evidence of a contrary intention on the part of the negotiators, it appears that the interpretation most consistent with the purpose of the Convention, and with the policy reflected in treaties between the United States of America and other countries, is to interpret the words "in Serbia" and "in the United States" as referring to the place where property rights are granted rather than to the geographical location of the person claiming such rights. As thus construed, the provision would accord to nationals of either party *wherever resident* rights similar to those enjoyed by nationals of the most-favored-nation *wherever resident*. A review of all relevant correspondence available at the National Archives indicates no intention contrary to this interpretation. As the Supreme Court has said:

> "Treaties are to be construed in a broad and liberal spirit, and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. Hauenstein v. Lynham, 100 U.S. 483, 487; Geofroy v. Riggs, supra, 271; Tucker v. Alexandroff, 183 U.S. 424, 437." Asakura v. Seattle, 265 U.S. 332, 342 (1924).

This note, of course, is not to be considered as having the character of an international agreement or as effecting any modification of the treaty.

Department of State,
Washington, April 24, 1958.

211.683/4-1858

No. 4298

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and, in accordance with talks held between representatives of the Yugoslav Embassy and representatives of the Department of State, has the honor to inform the Honorable the Secretary of State that in the United States there have in the post-war period been various interpretations of Article II of the "Convention for Facilitating and Developing Commercial Relations" concluded between Serbia and the United States on October 2/14, 1881, (also commonly called the Convention of Commerce and Navigation of 1881, Treaty Series 319, 22 Stat. 936, 2 Malloy's Treaties, etc. [*sic*] 1613). The governments of the Federal People's Republic of Yugoslavia and of the United States of America recognize that this Convention has at all times been and is now in force between Yugoslavia and the United States. Article II of the Convention reads in the English text as follows:

> "In all that concerns the right of acquiring, or possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian Subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favoured nation."
>
> "Within these limits, and under the same conditions as the subjects of the most favoured nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage, contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favoured nation."
>
> "They shall likewise be at liberty to export freely the proceeds of the sale of their property and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favoured state."

In the period since 1945 there have been cases in which Article II of the Convention of Commerce and Navigation of 1881, when applied in the United States, was interpreted as if it did not sufficiently bear out reciprocal rights of inheritance between the citizens of the Federal People's Republic of Yugoslavia and the citizens of the United States of America. According to the interpretations (particularly a statement by the Supreme Court of California in the case In re Arbulich Estate, 41 Cal. 2d 86, 257 P. 2d 433 and statements of some State attorneys general), the provisions of the Convention allegedly cannot be applied to those decedents' estates, the decedent of which is an American citizen who has left property in the United States to a Yugoslav citizen residing in Yugoslavia. According to such an interpretation, the acquisition of property by inheritance, pursuant to the provision of the most-favoured-nation clause in Article II of the Convention, encompasses only those citizens of Yugoslavia actually and physically living, sojourning or residing within the borders of the United States regardless of the decedent's citizenship. On the other hand, according to such an interpretation, the Yugoslav citizens permanently residing within the borders of Yugoslavia cannot inherit property left them by a resident of the United States, although the heirs are in most cases the closest relatives of the decedent's—his parents, spouse, children, brothers, sisters, etc. And vice versa, the corresponding should, then, apply as regards the inheritance rights of American citizens in Yugoslavia.

Such an interpretation, however, is directly contrary to the past and present interpretation of the Yugoslav courts and authorities, who always have been applying the provisions of Article II of the Convention so that by virtue thereof the American citizens are entitled to acquire property by inheritance, testamentary disposition or intestate succession, or by transfer, regardless of whether they are permanently residing in the United States of America, or anywhere else, as well as regardless of whether the dece-

dent is a citizen of Yugoslavia, the United States or any third country. This can be clearly deduced from many a decision of the Yugoslav courts, who have been applying and interpreting Article II of the Convention exclusively in the above sense.

In Article 23 of the Convention of Legal Relations between Yugoslavia and Poland, concluded on May 4, 1923, (85 League of Nations Treaty Series 455) the two contracting parties extended rights of inheritance to the nationals of the other as follows:

> "The nationals of either Contracting Party shall be allowed, on the same conditions as nationals of the country to succeed or to take possession of property passing to them in the territory of the other Contracting Party by operation of law or in virtue of testamentary disposition."

It is the construction of the Yugoslav Government that under the most-favoured-nation clause of Article II of the Convention of 1881 citizens of the United States regardless of their whereabouts or residence have had extended to them and are entitled to enjoy the same rights of inheritance from decedents' estates and of property located in Yugoslavia as nationals of Yugoslavia themselves, and regardless of whether the decedent was a citizen of Yugoslavia, the United States of America or any third country.

As regards the application of the most-favoured-nation clause to the rights of the Yugoslav citizens, regardless of their permanent residence, to acquire property and to inherit estates in the United States, it is clearly explained, for example, by Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and Argentina, signed at San Jose on July 27, 1853 (10 Stat. /Pt. 2, Public Treaties/ 16 Treaty Series 4, I Treaties /Malloy/ 20):

> "In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods and effects, and to the acquiring and disposing of property of every sort and denomination,

either by sale, donation, exchange, testament or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights, as native citizens: and they shall not be charged, in any of those respects, with any higher imposts or duties than those which are paid or may be paid, by native citizens, submitting, of course, to the local laws and regulations of each country respectively. If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the Consul-General or Consul of the nation to which the deceased belonged, or the representative of such Consul-General or Consul, in the absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs."

This treaty unequivocally grants Argentine citizens the same rights of inheritance as native citizens in the United States, in the same manner as the right is granted to the Yugoslav citizens by the treaty between Poland and Yugoslavia. It will be observed that in substance the 1853 treaty with Argentina is very similar to the 1923 treaty between Poland and Yugoslavia.

It is further the construction of the Yugoslav Government that by virtue of the most-favoured-nation clause and the trird [*sic*] subparagraph of Article II of the Convention of 1881, American citizens, wherever they may physically be or permanently reside, have and must be accorded the right to withdraw and export, i.e. have transferred to them upon request to the United States or wherever they may direct, moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The interpretation of the Yugoslav Government is also based on the spirit and intentions stated in the preamble to the Convention of Commerce and Navigation of 1881,

as well as on the basis of the needs resulting from the relations which prevailed at that time between the two countries.

It is apparent, therefore, that the construction of the treaty adopted by the Supreme Court of California in Re Arbulich Estate is not in accord with the understanding of the Yugoslav Government concerning the meaning and the effect of Article II of the Convention of 1881. This construction requires that there be twice read into the language the word "residing" or at least the word "sojourning" so the clause could read "citizens of the United States residing (or sojourning) in Serbia and Serbian citizens residing (or sojourning) in the United States". It requires no addition of words in the treaty to rephrase from Victorian into modern English what was beyond doubt the intention of the treaty-makers as to the persons to be covered by the treaty.

Article 5 of the "Agreement Between the Government of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Citizens", concluded on July 19, 1948, (Treaty Series No. 1803, 62 Stat. 2133) provides as follows:

> "The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the right and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favourable than the rights and privileges accorded to nationals of Yugoslavia or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2/14, 1881."

It is evident that both Parties have confirmed thereby that Article II of the Convention of 1881 is to be interpreted to the effect that the citizens of one contracting

party shall have the most-favoured-nation treatment when acquiring property in the territory of the other, regardless of the heir's residence or the decedent's citizenship. This joint interpretation (reached by both contracting parties) confirms the already reached concurrence on the existence of the rights of American citizens in Yugoslavia (and accordingly of the Yugoslav citizens in the United States of America) to acquire property (and accordingly to inherit) by virtue of Article II of the Convention of 1881, regardless of the heir's residence and the decedent's citizenship.

The Commission for Interpreting of Laws of the National Assembly of the Federal People's Republic of Yugoslavia issued on August 3, 1953, and the National Assembly subsequently confirmed, a binding interpretation, as follows:

> "According to Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States of America and its Citizens, concluded on July 19, 1948, and the provisions of Article II of the Convention of Commerce and Navigation between Serbia and the United States of America, concluded on October 2/14, 1881, which is still in force, citizens of the United States of America are equal with citizens of the Federal People's Republic of Yugoslavia in regard to the manner and object of acquiring and disposing of both personal and real property. Accordingly, they have the right to inherit real property in the territory of the Federal People's Republic of Yugoslavia under the same conditions as citizens of the Federal People's Republic of Yugoslavia on the basis of the Law, as well as on the basis of a Testament, regardless of the provision of Article 5, paragraph 1 of the Decree regarding the Control of Transfers of Real Property, of March 20, 1948."

In the note of the Secretariat of State for Foreign Affairs of Yugoslavia No. 515370/53 of October 21, 1953, to the American Embassy in Belgrade, in response to the

American Embassy's note No. 1368 of May 21, 1953, unqualified assurances were given by the Yugoslav Government that it considers citizens of the United States, regardless of their whereabouts or residence, to have full reciprocal rights of inheritance in decedents' estates located in Yugoslavia on the basis of Article II of the Convention between Serbia and the United States of 1881, as confirmed by Article 5 of the Agreement on Pecuniary Claims of the United States and its Citizens, concluded on July 19, 1948.

The Attorneys General of both Oregon and California, which enacted the so-called reciprocal inheritance rights statutes in the years 1937 and 1941 respectively, issued opinions that reciprocal inheritance rights existed between Yugoslavia and the United States in the manner required by their statutes by virtue of Article II of the Convention between Serbia and the United States of 1881. The opinion of the Honorable I. H. Van Winkle, Attorney General of Oregon, is in the 1938-1940 volume of the Opinions of the Attorneys General at page 136, that of the Honorable Earl Warren, Attorney General of California, is No. 1 NS 4451 dated July 15, 1942, from which the following is quoted:

> "Class 2. Where the same or reciprocal rights in the matter of acquiring and holding all kinds of property in any manner whatsoever are not granted to the citizens of the respective parties to the treaty in those specific words, but are in effect so granted by conferring such rights upon those citizens which the respective laws grant or shall grant in each of the states to the subjects of the most-favoured-nation, and under the same conditions as the subjects of the most-favoured-nation."
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> "In the class is Yugoslavia (the Treaty applying also to Serbia and the Kingdom of the Serbs, Croats and Slovenes) the citizens of which are entitled, by virtue of the reference provisions of such Treaty, to the same rights as those enjoyed by the citizens of Argentina."

In substantiation of the fact that Yugoslavia has always meticulously performed and carried out the obligations which, under its construction of the Convention, are due American citizens heirs or beneficiaries of estates and property in Yugoslavia, reference may be made to the Department's note of December 26, 1957, in response to this Embassy's note of November 4, 1957, No. 4693, wherein the Department stated:

> "In the light of the foregoing, the Embassy is informed that the Department has not been apprised of any instance where an American citizen has not been permitted to inherit or succeed by will or otherwise to property from an estate in Yugoslavia, or, after having duly made application therefor, has not been granted permission to transfer his inheritance of the proceeds of sale thereof to the United States in dollars."

In view of the foregoing, the Government of the Federal People's Republic of Yugoslavia would appreciate being advised of the opinion of the Government of the United States on the following:

Whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention for Facilitating and Developing Commercial Relations of 1881 and Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States and its Citizens of 1948 to safeguard the inheritance rights of American citizens and to ensure the transfer of the proceeds accruing thereof, regardless of their permanent residence, encompassing therefore also those American citizens residing in the United States, and reversely, whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention of 1881 and Article 5 of the Agree-

ment of 1948, to safeguard the inheritance rights of Yugoslav citizens and to ensure the transfer of the proceeds accruing thereof, regardless of their permanent residence, encompassing therefore also those residing in Yugoslavia!

The Yugoslav Ambassador avails himself of this opportunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.

Washington, D. C., April 18, 1958.